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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
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8 LYNN ODRICK, an individual, on behalf of
9 all others similarly situated and the general
10 public,

11 Plaintiff,

12 vs.
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14 UNIONBANCAL CORPORATION, a
15 Corporation, UNION BANK, N.A., a
16 corporation, and DOES 1-10

17 Defendants.

Case No: C 10-5565 SBA

**PRELIMINARY APPROVAL
ORDER**

18 WHEREAS, Plaintiff Lynn Odrick, individually and in her representative capacity
19 ("Plaintiff"), and Defendants UnionBancal Corporation and Union Bank, N.A. (collectively
20 "Defendants") have reached a proposed settlement of the above-captioned action (the
21 "Settlement");

22 WHEREAS, Plaintiff has moved the Court for preliminary approval of the proposed
23 Settlement on the terms and conditions set forth in the Settlement Agreement and Joint
24 Stipulation ("Settlement Agreement"), and for conditional certification of two classes;

25 AND NOW, the Court having reviewed and considered the Settlement Agreement, the
26 Unopposed Motion for Preliminary Approval of Class Action Settlement and Provisional
27 Certification of the Class, the supporting Points and Authorities, the Declarations of Michael
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1 Morrison, Douglas Hayes, and Lynn Odrick, the Notice of Pendency of Class Action Settlement
2 ("Class Notice"), the Exclusion Form, the Fair Labor Standards Act ("FLSA") Consent Form,
3 and the Proposed Order Granting Preliminary Approval, IT IS HEREBY ORDERED,
4 ADJUDGED and DECREED as follows:

5 1. This Order incorporates the terms of the Settlement Agreement and all capitalized
6 terms used herein shall have the meanings defined in the Settlement Agreement.

7 2. The Court appoints Plaintiff as the Class Representative.

8 3. For purposes of settlement only, the Court certifies the following Settlement
9 Classes:

10 National Class

11 All non-California based employees of Union Bank, N.A., who held at least
12 one of the following job titles, including but not limited to: : Business Trust
13 Administrator I, Trust Administrator II, Sr. Business Trust Administrator,
14 Sr. Trust Administrator Inst., Sr. Trust Administrator-Taft Hartley, Personal
15 Trust Administrator II, Personal Trust Administrator IV, Relationship
16 Manager I- IS, Relationship Manager II- IS, Relationship Manager III- IS;
and Senior Relationship Manger I - IS, from December 8, 2007 to the date
of preliminary approval.

17 State Class

18 All California-based employees of Union Bank, N.A. who held at least one of the
19 following job titles, including, but not limited to: Business Trust Administrator I,
20 Trust Administrator II, Sr. Business Trust Administrator, Sr. Trust Administrator
21 Inst., Sr. Trust Administrator-Taft Hartley, Personal Trust Administrator II,
22 Personal Trust Administrator III, Personal Trust Administrator IV, Relationship
23 Manager I- IS, Relationship Manager II- IS, Relationship Manager III-IS; and
24 Senior Relationship Manger I - IS, from December 8, 2006 to the date of
25 preliminary approval.

26 4. The Court finds, for settlement purposes only, that the requirements of Rule
27 23(a) and Rule 23(b) of the Federal Rules of Civil Procedure are satisfied and
28 accordingly certifies the State Class.

29 5. The Court finds, solely for purposes of considering this Settlement, that the
requirements of Rule 23(a) are satisfied: (1) members of the State Class are too numerous
to be joined individually; (2) there are questions of law and fact common to the State

1 Class; (3) the claims of the Class Representative are typical of the claims of the State
2 Class; and (4) the Class Representative will fairly and adequately protect the interests of
3 the State Class. The Court also finds, solely for purposes of considering the Settlement,
4 that the requirements of Rule 23(b)(3) are satisfied: (1) questions of law or fact common
5 to members of the State Class predominate over any questions affecting only individual
6 members; and (2) a class action is superior to other available methods for the fair and
7 efficient adjudication of the controversy.

8 6. The Court finds, for settlement purposes only, that the standard required for
9 conditional certification of a collective action under the FLSA is satisfied, i.e., the
10 members of the National Class are "similarly situated" for conditional certification
11 purposes.

12 7. Subject to further consideration by the Court at the time of the Final
13 Approval Hearing, the Court preliminarily approves the Settlement Agreement as fair,
14 reasonable, and adequate to the Settlement Classes and accordingly directs that it shall be
15 submitted to the Settlement Classes for their consideration.

16 8. The Court finds that the parties entered into the Settlement Agreement in
17 good faith, following arms-length negotiations, including a mediation session conducted
18 by Jeffery Ross.

19 9. The Court appoints Alexander Krakow + Glick LLP, and Hurwitz, Orihuela
20 & Hayes, LLP as Class Counsel. Michael Morrison and Douglas Hayes are appointed as
21 Lead Class Counsel.

22 10. Simpluris, Inc., is appointed as the Claims Administrator. The Claims
23 Administrator shall administer the Settlement in accordance with the terms set forth in
24 the Settlement Agreement and perform the functions set forth therein.

25 11. The Court approves the Class Notice Form, the Exclusion Form, and the
26 FLSA Consent Form.
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1 12. The Court finds that the Notice Plan, as set forth in Section IV of the
2 Settlement Agreement, including the form and content of the Class Notice attached as
3 Exhibit A, is the best notice practicable under the circumstances and constitutes due and
4 sufficient notice to all persons within the Settlement Classes of: (i) the pendency and
5 nature of the action; (ii) certification of the Settlement Classes; (iii) the claims, issues and
6 defenses in the action; (iv) that a member of the Settlement Classes may enter an
7 appearance through an attorney; (v) the terms of the Settlement Agreement; (vi) the right
8 of persons within the State Class to exclude themselves (i.e., opt-out) from the State
9 Class and the time and manner for requesting exclusion; (vii) the binding effect of any
10 judgment, whether favorable or not, on persons within the State Class who do not request
11 to be excluded; (viii) the requirement that National Class members must opt-in by filing a
12 FLSA Consent Form to participate in the Settlement, and the time and manner for opting-
13 in; (ix) the requirement that State Class members must opt-in by filing a FLSA Consent
14 Form to receive a full settlement share, and the time and manner for opting-in; (x) the
15 right of persons within the State Class who do not request to be excluded to object to the
16 Settlement, and the right of persons in the National Class who opt-in to object to the
17 Settlement; (xi) the time and manner for objecting to the settlement; (xii) the request for
18 an award of attorneys' fees, costs and an incentive award to Plaintiff; and (xiii) the Final
19 Approval Hearing.
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21 13. On or before June 30, 2012, Defendants shall forward to the appointed
22 Claims Administrator, Simpluris, Inc., a database (in an electronic spreadsheet format) of
23 all Class Members, including the names, last known addresses and telephone numbers,
24 dates of employment in Covered Positions, social security numbers, and respective total
25 weeks worked during the Covered Period, December 8, 2006 through June 20, 2012.

26 14. On or before July 11, 2012, the Claims Administrator, Simpluris, Inc., shall
27 mail to each member of the Settlement Classes, by first class, postage pre-paid, the Class
28 Notice, the Request for Exclusion Form, the FLSA Consent Form, and a postage-paid

1 envelope addressed to the Claims Administrator. All mailings shall be made to the
2 present and/or last known mailing address of the Class Members based on Defendants'
3 records, as well as addresses that may be located by the Claims Administrator, who will
4 conduct standard address searches in cases of returned mail. The Court finds that the
5 mailing of Class Notice to Class Members is the best means practicable by which to
6 reach Class Members and is reasonable and adequate pursuant to all constitutional and
7 statutory requirements including all due process requirements.

8 15. Requests for Exclusion ("opt-out requests") by State Class members must be
9 mailed to the Claims Administrator, Simpluris, Inc., postmarked on or before September
10 9, 2012, (i.e., 60 days after mailing of the Class Notice). Any person within the State
11 Class who submits a timely and valid Request for Exclusion shall not be bound by the
12 Settlement Agreement, shall not be entitled to share in the benefits of the Settlement, and
13 shall not be bound by the Final Order and Judgment. Any person within the State Class
14 who does not submit a timely and valid Request for Exclusion shall be deemed a
15 Settlement Class Member and shall be bound by the terms of the Settlement Agreement
16 and the Final Order and Judgment. The Claims Administrator shall provide copies of all
17 Requests for Exclusion to Class Counsel and defense counsel as soon as practicable after
18 receipt of each Request for Exclusion. No later than October 16, 2012, the Claims
19 Administrator shall deliver to Class Counsel, who shall file it with the Court, and serve
20 on defense counsel, a report stating the total number of persons who have submitted
21 timely and valid Requests for Exclusion from the Settlement Class, and the names,
22 addresses and telephone numbers of all such persons.

24 16. Objections must be filed with the Court as described in the Class Notice on
25 or before September 9, 2012 (i.e., 60 days after mailing of the Class Notice) and served
26 on Class Counsel and on defense counsel. No person will be permitted to present any
27 objection at the Final Approval Hearing who has not filed a timely written objection in
28 accordance with the terms of the Class Notice. Any Settlement Class Member who fails

1 to timely file and serve a written objection shall be deemed to have waived, and shall be
2 foreclosed from raising, any objection to the Settlement, to the fairness, reasonableness or
3 adequacy of the Settlement, to the payment of attorneys' fees, costs, and payment of an
4 incentive award, and to the Final Approval Order or the right to appeal same. Class
5 Counsel should be prepared at the Final Approval Hearing to respond to objections filed
6 by Settlement Class Members, and to provide other information, as appropriate, bearing
7 on whether the Settlement should be approved.

8 17. FLSA Consent Forms must be mailed to the Claims Administrator,
9 postmarked on or before September 9, 2012 (i.e., 60 days after mailing of the Class
10 Notice). Any person in the National Class that does not submit a timely FLSA Consent
11 Form shall not be entitled to share in the benefits of the Settlement, and shall not be
12 bound by the Final Order and Judgment. Any person in the State Class that does not
13 submit a timely FLSA Consent Form will receive a reduced settlement payment of
14 approximately 1/3 of the amount they otherwise would receive.

15 18. A Final Approval Hearing shall be held before this Court at 1:00 p.m. on
16 November 6, 2012, in Courtroom 1 on the fourth floor of the United States District Court
17 for the Northern District of California, Oakland Courthouse, located at 1301 Clay Street,
18 Oakland, California 94612, to, inter alia: (i) determine whether to grant final approval to
19 the Settlement Agreement; (ii) consider any timely objections to this Settlement and the
20 parties' responses to such objections; (iii) determine whether judgment should be entered
21 dismissing the action with prejudice; and (iv) rule on Class Counsel's application for
22 attorneys' fees, costs and an incentive award for Plaintiff. The Final Approval Hearing
23 may, from time to time and without further notice to the Settlement Classes, be continued
24 by order of the Court.

25 19. No later than October 16, 2012, a motion for final approval of the Settlement
26 Agreement shall be filed, as well as responses by the parties to any objections that have
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1 been filed against final approval of the Settlement Agreement or any aspect of it,
2 including the application for attorneys' fees, costs, and an incentive award for Plaintiff.

3 20. Class Counsel shall file an application for an award of attorneys' fees, costs
4 and an incentive award for Plaintiff by no later than August 1, 2012.

5 21. It shall be the responsibility of Class Counsel and the Claims Administrator
6 to respond to all inquiries from Settlement Class Members.

7 22. In the event of the occurrence of the Settlement Effective Date, as defined in
8 the Settlement Agreement, all Class Members, except those members of the State Class
9 who have requested exclusion from the settlement and members of the National Class
10 who have not opted-in, and their successors, shall conclusively be deemed to have given
11 full releases of any and all Class Members Released Claims as defined in the Settlement
12 Agreement against Defendants, their former and present parents, subsidiaries, affiliated
13 corporations and entities, and each of their respective officers, officials, directors,
14 employees, partners, shareholders and agents, any other successors, assigns or legal
15 representatives ("Class Members' Released Parties") and all such Class Members and
16 their successors shall be permanently enjoined and forever barred from asserting any
17 Class Members' Released Claims against any Class Members' Released Parties as
18 described by the Settlement Agreement.
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20 23. If, for any reason, the Court does not execute and file an Order of Final
21 Approval, or if the Settlement Effective Date does not occur for any reason whatsoever,
22 the proposed Settlement Agreement and the proposed settlement and all evidence and
23 proceedings had in connection therewith, shall be without prejudice to the status quo ante
24 rights of the parties to the litigation as more specifically set forth in the Settlement
25 Agreement.

26 24. With the exception of such proceedings as are necessary to implement,
27 effectuate and grant final approval to the proposed Settlement, all proceedings in this
28 action are stayed until further order of this Court.

(b) Defendants' Counsel: Eric Steinert and Justin Curley, Seyfarth Shaw LLP, 560 Mission Street, Suite 3100, San Francisco, CA 94105.

IT IS SO ORDERED.

Sandra B. Armstrong
SAUNDRA BROWN ARMSTRONG
United States District Judge